

106TH CONGRESS  
2D SESSION

# S. 2230

To provide tax relief in relation to, and modify the treatment of, members of a reserve component of the Armed Forces, and for other purposes.

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IN THE SENATE OF THE UNITED STATES

MARCH 9, 2000

Mr. GRAMS introduced the following bill; which was read twice and referred to the Committee on Finance

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## A BILL

To provide tax relief in relation to, and modify the treatment of, members of a reserve component of the Armed Forces, and for other purposes.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*

3       **SECTION 1. SHORT TITLE.**

4       This Act may be cited as the “Military Guard and  
5       Reserve Fairness Act of 2000”.

1 **TITLE I—TAX BENEFITS FOR RE-**  
 2 **SERVES OF THE ARMED**  
 3 **FORCES**

4 **SEC. 101. INCOME EXCLUSION FOR PAY OF CERTAIN RE-**  
 5 **SERVISTS DEPLOYED OVERSEAS.**

6 (a) IN GENERAL.—Part III of subchapter B of chap-  
 7 ter 1 of the Internal Revenue Code of 1986 (relating to  
 8 items specifically excluded from gross income) is amended  
 9 by inserting after section 112 the following new section:

10 **“SEC. 113. CERTAIN COMPENSATION OF MEMBERS OF RE-**  
 11 **SERVE COMPONENT.**

12 “(a) ENLISTED MEMBERS.—Gross income does not  
 13 include compensation received for active service as a mem-  
 14 ber below the grade of commissioned officer in a reserve  
 15 component of the Armed Forces of the United States by  
 16 reason of such member’s active duty performed, as des-  
 17 ignated in the member’s military orders, in support of a  
 18 contingency operation (as defined in section 101(a)(13) of  
 19 title 10, United States Code) while deployed outside the  
 20 United States.

21 “(b) COMMISSIONED OFFICER.—Gross income does  
 22 not include so much of the compensation as does not ex-  
 23 ceed the maximum enlisted amount received for active  
 24 service as a commissioned officer in a reserve component  
 25 of the Armed Forces of the United States by reason of

1 such officer's active duty performed, as designated in the  
 2 officer's military orders, in support of a contingency oper-  
 3 ation (as so defined) while deployed outside the United  
 4 States.

5 “(c) DEFINITIONS.—For purposes of this section—

6 “(1) IN GENERAL.—Any terms used in this sec-  
 7 tion have the meaning given such terms in section  
 8 112(c).

9 “(2) DEPLOYED.—The term ‘deployed’ means  
 10 that a member is performing services in a training  
 11 exercise or operation at a location or under cir-  
 12 cumstances that make it impossible for the member  
 13 to spend off-duty time at the member's official home  
 14 of record.

15 “(3) UNITED STATES.—The term ‘United  
 16 States’ includes the District of Columbia, American  
 17 Samoa, the Federated States of Micronesia, Guam,  
 18 the Republic of the Marshall Islands, the Common-  
 19 wealth of the Northern Mariana Islands, the Com-  
 20 monwealth of Puerto Rico, the Republic of Palau,  
 21 and the United States Virgin Islands.”.

22 (b) DEFINITION OF RESERVE COMPONENT.—Section  
 23 7701(a) of the Internal Revenue Code of 1986 (relating  
 24 to definitions) is amended by adding at the end the fol-  
 25 lowing new paragraph:

1                   “(47) RESERVE COMPONENT OF THE ARMED  
2           FORCES OF THE UNITED STATES.—The term ‘re-  
3           serve component of the Armed Forces of the United  
4           States’ means a reserve component described in sec-  
5           tion 10101 of title 10, United States Code.”.

6 (c) CONFORMING AMENDMENT.—The table of sec-  
7 tions for part III of subchapter B of chapter 1 of the In-  
8 ternal Revenue Code of 1986 is amended by inserting  
9 after the item relating to section 112 the following new  
10 item:

“Sec. 113. Certain compensation of members of reserve components.”.

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to service in taxable years beginning after December 31, 2000.

14 SEC. 102. TAX CREDIT FOR RESERVE FORCES PARTICIPA-  
15 TION.

(a) IN GENERAL.—Subpart D of part IV of subchapter A of chapter 1 of the Internal Revenue Code of 1986 (relating to business-related credits) is amended by adding at the end the following new section:

20 **“SEC. 45D. RESERVE FORCE PARTICIPATION CREDIT.**

21       “(a) GENERAL RULE.—For purposes of section 38,  
22 the reserve force participation credit determined under  
23 this section for the taxable year is an amount equal to  
24 the sum of—

1           “(1) the employment credit with respect to all  
2           qualified employees of the taxpayer, plus

3           “(2) the self-employment credit of a qualified  
4           self-employed taxpayer.

5           “(b) LIMITATION ON MAXIMUM CREDIT.—The credit  
6           allowed under subsection (a) with respect to a taxpayer  
7           for the taxable year shall not exceed \$30,000.

8           “(c) EMPLOYMENT CREDIT.—For purposes of this  
9           section—

10           “(1) IN GENERAL.—The employment credit  
11           with respect to a qualified employee of the taxpayer  
12           for any taxable year is equal to 50 percent of the  
13           amount of qualified compensation that the taxpayer  
14           would have paid to the employee during the taxable  
15           year had the employee not been participating in  
16           qualified reserve duty, but only with respect to peri-  
17           ods during which the employee participates in such  
18           duty to the exclusion of normal employment duties.

19           “(2) QUALIFIED COMPENSATION.—

20           “(A) IN GENERAL.—The term ‘qualified  
21           compensation’ means compensation which is—

22           “(i) normally contingent on the em-  
23           ployee’s presence for work and which  
24           would be deductible from the taxpayer’s  
25           gross income under section 162 if the em-

1            ployee were present and receiving such  
2            compensation, and

3            “(ii) not characterized by the taxpayer  
4            as vacation or holiday pay, or as sick leave  
5            or pay, or as any other form of pay for a  
6            nonspecific leave of absence, and the re-  
7            ceipt of which does not result in any reduc-  
8            tion in the amount of vacation time, sick  
9            leave, or other nonspecific leave previously  
10          credited to or earned by the employee with  
11          respect to the number of days covered by  
12          such compensation.

13          “(B) ONLY FIRST \$2,000 PER YEAR TAKEN  
14          INTO ACCOUNT.—The amount of qualified com-  
15          pensation which may be taken into account with  
16          respect to a qualified employee shall not exceed  
17          \$2,000 per year.

18          “(3) QUALIFIED EMPLOYEE.—The term ‘quali-  
19          fied employee’ means a person who—

20                “(A) has been an employee of the taxpayer  
21                for the 21-day period immediately preceding the  
22                period during which the employee participates  
23                in qualified reserve duty, and

24                “(B) is a member of the Ready Reserve  
25                (as described in section 10142 of title 10,

1 United States Code) of a reserve component of  
 2 the Armed Forces of the United States.

3 “(d) SELF-EMPLOYMENT CREDIT.—

4 “(1) IN GENERAL.—The self-employment credit  
 5 of a qualified self-employed taxpayer for any taxable  
 6 year is 50 percent of an amount equal to—

7 “(A) the excess, if any, of—

8 “(i) the average daily self-employment  
 9 income of the self-employed taxpayer for  
 10 the taxable year, over

11 “(ii) the average daily military pay  
 12 and allowances received by the self-em-  
 13 ployed taxpayer, while participating in  
 14 qualified reserve duty to the exclusion of  
 15 the taxpayer’s normal self-employment du-  
 16 ties, multiplied by

17 “(B) the number of days the taxpayer par-  
 18 ticipates in qualified reserve duty during the  
 19 taxable year.

20 “(2) AVERAGE DAILY SELF-EMPLOYMENT IN-  
 21 COME; AVERAGE DAILY MILITARY PAY AND ALLOW-  
 22 ANCES.—For purposes of paragraph (1)—

23 “(A) AVERAGE DAILY SELF-EMPLOYMENT  
 24 INCOME.—The term ‘average daily self-employ-  
 25 ment income’ means an amount equal to—

1 “(i) the self-employment income (as  
 2 defined in section 1402(b)) of the taxpayer  
 3 for the taxable year, divided by

4 “(ii) a number equal to the excess, if  
 5 any, of—

6 “(I) 365, over

7 “(II) the number of days the tax-  
 8 payer participates in qualified reserve  
 9 duty during the taxable year.

10 “(B) AVERAGE DAILY MILITARY PAY AND  
 11 ALLOWANCES.—The term ‘average daily mili-  
 12 tary pay and allowances’ means an amount  
 13 equal to—

14 “(i) the amount received by the tax-  
 15 payer during the taxable year as military  
 16 pay and allowances in relation to the tax-  
 17 payer’s participation in qualified reserve  
 18 duty, divided by

19 “(ii) the total number of days the tax-  
 20 payer participates in qualified reserve duty  
 21 during the taxable year.

22 “(3) QUALIFIED SELF-EMPLOYED TAXPAYER.—  
 23 The term ‘qualified self-employed taxpayer’ means a  
 24 taxpayer who—



1           “(A) has net earnings from self-employ-  
 2           ment (as defined in section 1402) for the tax-  
 3           able year, and

4           “(B) is a member of the Ready Reserve  
 5           (as so described) of a reserve component of the  
 6           Armed Forces of the United States.

7           “(e) CREDIT IN ADDITION TO DEDUCTION.—The em-  
 8           ployment credit allowed under this section with respect to  
 9           a taxpayer shall be in addition to any other deduction al-  
 10          lowable with respect to compensation paid to a qualified  
 11          employee during any period the employee participates in  
 12          qualified reserve duty to the exclusion of normal employ-  
 13          ment duties.

14          “(f) OTHER DEFINITIONS.—For purposes of this  
 15          section—

16               “(1) MILITARY PAY.—The term ‘military pay’  
 17               has the same meaning as the term ‘pay’ under sec-  
 18               tion 101(21) of title 37, United States Code.

19               “(2) ALLOWANCES.—The term ‘allowances’  
 20               means the allowances payable to a member of the  
 21               Armed Forces of the United States under chapter 7  
 22               of such title.

23               “(3) QUALIFIED RESERVE DUTY.—The term  
 24               ‘qualified reserve duty’, with respect to a Reserve  
 25               who is a qualified employee or qualified self-em-

1       employed taxpayer, means active duty performed, as  
 2       designated in the Reserve’s military orders, in sup-  
 3       port of a contingency operation (as defined in sec-  
 4       tion 101(a)(13) of title 10, United States Code).  
 5       Such term includes any period in which the Reserve  
 6       is in a travel status in connection with such duty.

7       “(g) SPECIAL RULES.—

8               “(1) TREATMENT OF EMPLOYER.—All employ-  
 9       ers treated as a single employer under subsection (a)  
 10      or (b) of section 52 or subsection (m) or (o) of sec-  
 11      tion 414 shall be treated as a single employer for  
 12      purposes of this section.

13              “(2) FAILURE TO COMPLY WITH EMPLOYMENT  
 14      OR REEMPLOYMENT RIGHTS OF MEMBERS OF THE  
 15      RESERVE COMPONENTS OF THE ARMED FORCES.—  
 16      No credit shall be allowed under subsection (a) with  
 17      respect to a taxpayer for any taxable year, and the  
 18      2 taxable years immediately following such year, in  
 19      which the taxpayer is under a final order, judgment,  
 20      or other process issued or required by a district  
 21      court of the United States under section 4323 of  
 22      title 38, United States Code, with respect to a viola-  
 23      tion of chapter 43 of such title.

24              “(3) PERSONS ORDERED TO ACTIVE DUTY FOR  
 25      TRAINING.—An individual shall not be treated as a

1 qualified employee or qualified self-employed tax-  
2 payer with respect to any period during which the  
3 individual is called or ordered to active duty for any  
4 portion of such period for any of the following types  
5 of duty:

6 “(A) Active duty for training under any  
7 provision of title 10, United States Code.

8 “(B) Training at encampments, maneu-  
9 vers, outdoor target practice, or other exercises  
10 under chapter 5 of title 32, United States Code.

11 “(C) Full-time National Guard duty (as  
12 defined in section 101(d)(5) of title 10, United  
13 States Code).

14 “(4) NORMAL EMPLOYMENT AND SELF-EM-  
15 PLOYMENT DUTIES.—For purposes of subsection  
16 (c)(1) or (d)(1), an individual shall be deemed not  
17 to be participating in qualified reserve duty to the  
18 exclusion of normal employment or self-employment  
19 duties with respect to the entire period of qualified  
20 reserve duty if, for any portion of such period, such  
21 individual engages in or undertakes any substantial  
22 activity related to the normal employment or self-  
23 employment duties of such individual, other than ac-  
24 tivities engaged in or undertaken while such indi-

vidual is in an authorized leave status or other authorized absence from military duties.

“(5) CERTAIN RULES TO APPLY.—Rules similar to the rules of subsections (c), (d), and (e) of section 52 shall apply for purposes of this section.”.

(b) CONFORMING AMENDMENT.—Section 38(b) of the Internal Revenue Code of 1986 (relating to general business credit) is amended by striking “plus” at the end of paragraph (11), by striking the period at the end of paragraph (12) and inserting “, plus”, and by adding at the end the following new paragraph:

“(13) the reserve force participation credit determined under section 45D(a).”.

(c) CLERICAL AMENDMENT.—The table of sections for subpart D of part IV of subchapter A of chapter 1 of the Internal Revenue Code of 1986 is amended by inserting after the item relating to section 45C the following new item:

“Sec. 45D. Reserve force participation credit.”.

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 2000.

**SEC. 103. DEDUCTION OF CERTAIN EXPENSES OF RESERVISTS.**

(a) DEDUCTION ALLOWED.—Section 162 of the Internal Revenue Code of 1986 (relating to trade or business

1 expenses) is amended by redesignating subsection (p) as  
 2 subsection (q) and inserting after subsection (o) the fol-  
 3 lowing new subsection:

4       “(p) TREATMENT OF EXPENSES OF MEMBERS OF  
 5 RESERVE COMPONENT OF ARMED FORCES OF THE  
 6 UNITED STATES.—For purposes of subsection (a), in the  
 7 case of an individual who performs services as a member  
 8 of a reserve component of the Armed Forces of the United  
 9 States at any time during the taxable year, such individual  
 10 shall be deemed to be away from home in the pursuit of  
 11 a trade or business during any period for which such indi-  
 12 vidual is away from home in connection with such serv-  
 13 ice.”.

14       (b) DEDUCTION ALLOWED WHETHER OR NOT TAX-  
 15 PAYER ELECTS TO ITEMIZE.—Section 62(a)(2) of the In-  
 16 ternal Revenue Code of 1986 (relating to certain trade and  
 17 business deductions of employees) is amended by adding  
 18 at the end the following new subparagraph:

19               “(D) CERTAIN EXPENSES OF MEMBERS OF  
 20 RESERVE COMPONENTS OF THE ARMED FORCES  
 21 OF THE UNITED STATES.—The deduction al-  
 22 lowed by section 162 paid or incurred by the  
 23 taxpayer in connection with the performance of  
 24 services by such taxpayer as a member of a re-

1           serve component of the Armed Forces of the  
2           United States.”.

3           (c) ALLOWANCE OF DEDUCTION FOR ENTERTAIN-  
4 MENT EXPENSES.—Subsection (e) of section 274 of the  
5 Internal Revenue Code of 1986 (relating to disallowance  
6 of certain entertainment, etc., expenses) is amended by  
7 adding at the end the following new paragraph:

8           “(10) EXPENSES INCURRED BY MEMBERS OF  
9 RESERVE COMPONENTS OF THE ARMED FORCES OF  
10 THE UNITED STATES.—Expenses paid or incurred  
11 by a taxpayer in connection with the performance of  
12 services by such taxpayer as a member of a reserve  
13 component of the Armed Forces of the United  
14 States.”.

15          (d) INAPPLICABILITY OF 50 PERCENT CEILING ON  
16 DEDUCTION FOR MEAL AND ENTERTAINMENT EX-  
17 PENSES.—Subparagraph (A) of section 274(n)(2) of the  
18 Internal Revenue Code of 1986 (relating to exceptions) is  
19 amended by striking “or (9)” and inserting “(9), or (10)”.

20          (e) EFFECTIVE DATE.—The amendments made by  
21 this section shall apply to amounts paid or incurred in tax-  
22 able years beginning after December 31, 2000.

1 **TITLE II—ADDITIONAL BENE-**  
 2 **FITS FOR RESERVES OF THE**  
 3 **ARMED FORCES**

4 **SEC. 201. SHORT TITLE.**

5 This title may be cited as the “Reserve Components  
 6 Equity Act of 2000”.

7 **SEC. 202. TRAVEL BY RESERVES ON MILITARY AIRCRAFT**  
 8 **OUTSIDE CONTINENTAL UNITED STATES.**

9 (a) SPACE-REQUIRED TRAVEL FOR TRAVEL TO  
 10 DUTY STATIONS OCONUS.—(1) Subsection (a) of section  
 11 18505 of title 10, United States Code, is amended—

12 (A) by inserting “annual training duty or” be-  
 13 fore “inactive-duty training” both places it appears;  
 14 and

15 (B) by inserting “duty or” before “training if”.

16 (2) The heading of such section is amended to read  
 17 as follows:

18 **“§ 18505. Space-required travel: Reserves traveling to**  
 19 **annual training duty or inactive-duty**  
 20 **training OCONUS”**

21 (b) SPACE-AVAILABLE TRAVEL FOR MEMBERS OF  
 22 SELECTED RESERVE AND GRAY AREA RETIREES.—(1)  
 23 Chapter 1805 of such title is amended by adding at the  
 24 end the following new section:

1 **“§ 18506. Space-available travel: Selected Reserve**  
2 **members and reserve retirees under age**  
3 **60; dependents**

4 “(a) ELIGIBILITY FOR SPACE-AVAILABLE TRAVEL.—  
5 The Secretary of Defense shall prescribe regulations to  
6 provide persons described in subsection (b) with transpor-  
7 tation on aircraft of the Department of Defense on a  
8 space-available basis under the same terms and conditions  
9 (including terms and conditions applicable to travel out-  
10 side the United States) as apply to members and former  
11 members of the armed forces entitled to retired pay.

12 “(b) ELIGIBLE PERSONS.—Subsection (a) applies to  
13 the following persons:

14 “(1) A person who is a member of the Selected  
15 Reserve in good standing (as determined by the Sec-  
16 retary concerned).

17 “(2) A person who is a member or former mem-  
18 ber of a reserve component under age 60 who, but  
19 for age, would be entitled to retired pay under chap-  
20 ter 1223 of this title.

21 “(c) DEPENDENTS.—A dependent of a person de-  
22 scribed in subsection (b) shall be provided transportation  
23 under this section on the same basis as dependents of  
24 members and former members of the armed forces entitled  
25 to retired pay.



1       “(d) LIMITATION ON REQUIRED IDENTIFICATION.—  
 2 Neither the ‘Authentication of Reserve Status for Travel  
 3 Eligibility’ form (DD Form 1853) nor any other form,  
 4 other military identification and duty orders or other  
 5 forms of identification required of active duty personnel,  
 6 may be required to be presented by persons requesting  
 7 space-available transportation within or outside the conti-  
 8 nental United States under this section.

9       “(e) DEPENDENT DEFINED.—In this section, the  
 10 term ‘dependent’ has the meanings given that term in sub-  
 11 paragraphs (A), (B), (C), (D), and (I) of section 1074(2)  
 12 of this title.”.

13       (2) The table of sections at the beginning of such  
 14 chapter is amended by striking the item relating to section  
 15 18505 and inserting the following:

“18505. Space-required travel: Reserves traveling to annual training duty or in-  
 active-duty training OCONUS.

“18506. Space-available travel: Selected Reserve members and reserve retirees  
 under age 60; dependents.”.

16       (c) EFFECTIVE DATE.—The regulations required  
 17 under section 18506 of title 10, United States Code, as  
 18 added by subsection (b), shall be prescribed not later than  
 19 180 days after the date of the enactment of this Act.

1 **SEC. 203. BILLETING SERVICES FOR RESERVE MEMBERS**

2 **TRAVELING FOR INACTIVE DUTY TRAINING.**

3 (a) IN GENERAL.—(1) Chapter 1217 of title 10,  
4 United States Code, is amended by inserting after section  
5 12603 the following new section:

6 **“§ 12604. Billeting in Department of Defense facili-**  
7 **ties: Reserves attending inactive-duty**  
8 **training**

9 “(a) AUTHORITY FOR BILLETING ON SAME BASIS AS  
10 ACTIVE DUTY MEMBERS TRAVELING UNDER ORDERS.—  
11 The Secretary of Defense shall prescribe regulations au-  
12 thorizing a Reserve traveling to inactive-duty training at  
13 a location more than 50 miles from that Reserve’s resi-  
14 dence to be eligible for billeting in Department of Defense  
15 facilities on the same basis and to the same extent as a  
16 member of the armed forces on active duty who is trav-  
17 eling under orders away from the member’s permanent  
18 duty station.

19 “(b) PROOF OF REASON FOR TRAVEL.—The Sec-  
20 retary shall include in the regulations the means for con-  
21 firming a Reserve’s eligibility for billeting under sub-  
22 section (a).”.

23 (2) The table of sections at the beginning of such  
24 chapter is amended by inserting after the item relating  
25 to section 12603 the following new item:

“12604. Billeting in Department of Defense facilities: Reserves attending inactive-duty training.

1 (b) EFFECTIVE DATE.—Section 12604 of title 10,  
 2 United States Code, as added by subsection (a), shall  
 3 apply with respect to periods of inactive-duty training be-  
 4 ginning more than 180 days after the date of the enact-  
 5 ment of this Act.

6 **SEC. 204. ELIMINATION OF CAP ON MAXIMUM RESERVE RE-**  
 7 **TIREMENT POINTS THAT MAY BE CREDITED**  
 8 **IN ANY YEAR.**

9 Section 12733(3) of title 10, United States Code, is  
 10 amended by striking “but not more than” and all that  
 11 follows and inserting “but not more than—

12 “(A) 60 days in any one year of service be-  
 13 fore the year of service that includes September  
 14 23, 1996; and

15 “(B) 75 days in the year of service that in-  
 16 cludes September 23, 1996, and in any subse-  
 17 quent year of service before the year of service  
 18 that includes the date of the enactment of the  
 19 Reserve Components Equity Act of 2000.”.

20 **SEC. 205. AUTHORITY FOR PROVISION OF LEGAL SERVICES**  
 21 **TO RESERVE COMPONENT MEMBERS FOL-**  
 22 **LOWING RELEASE FROM ACTIVE DUTY.**

23 (a) LEGAL SERVICES.—Section 1044(a) of title 10,  
 24 United States Code, is amended—

1           (1) by redesignating paragraph (4) as para-  
2       graph (5); and

3           (2) by inserting after paragraph (3) the fol-  
4       lowing new paragraph (4):

5           “(4) Members of reserve components of the  
6       armed forces not covered by paragraph (1) or (2)  
7       following release from active duty under a call or  
8       order to active duty for more than 30 days issued  
9       under a mobilization authority (as determined by the  
10      Secretary of Defense), but only during the period  
11      that begins on the date of the release and is equal  
12      to twice the length of the period served on active  
13      duty under such call or order to active duty.”.

14       (b) DEPENDENTS.—Paragraph (5) of such section,  
15   as redesignated by subsection (a)(1), is amended by strik-  
16   ing “and (3)” and inserting “(3), and (4)”.

17       (c) IMPLEMENTING REGULATIONS.—Regulations to  
18   implement the amendments made by this section shall be  
19   prescribed not later than 180 days after the date of the  
20   enactment of this Act.

○